

How the New Infrastructure Act Aims to Bridge the Digital Divide

Congress recently passed the long-awaited bipartisan [Infrastructure Investment and Jobs Act](#) (IIJA). The law allocates over \$1 trillion in new and repurposed funds to upgrade the country's infrastructure. This funding includes \$65 billion for broadband infrastructure and government programs aimed at expanding access to [more reliable, affordable, and faster internet services](#). The IIJA accomplishes this through three core measures: infrastructure grants, service plan subsidies for the disadvantaged, and new labeling requirements on broadband internet access service providers to improve transparency around pricing and performance.

The IIJA specifically takes an equity-focused approach towards bridging the digital divide to the service area coverage, affordability, and terms of broadband service for over 30 million Americans, including communities of color and those living in rural areas, particularly as the economy has grown more dependent on internet access to connect workers and students remotely.

This update summarizes the broadband-related provisions in the IIJA, the next steps necessary by federal agencies to implement the law's objectives, and timing considerations.

Broadband Equity, Access, and Deployment Program and Other Infrastructure Grants

Over \$45 billion of the IIJA's broadband budget will go towards the Broadband Equity, Access, and Deployment Program (Program), a set of broadband deployment grants for states and U.S. territories. The Program focuses on providing grants to aid "unserved" locations, which do not have widespread internet access with at least 25 megabits per second (Mbps) download speed, and "underserved" locations, which lack widespread internet access with at least 100 Mbps download speeds. The assistant secretary of commerce for communications and information will oversee the grant making process.

The IIJA allocates a minimum grant of \$100 million to each state and U.S. territory. The assistant secretary allocates the remaining portion of the \$45 billion following a formula defined in the IIJA that considers the state or territory's proportion of unserved locations. In addition, the assistant secretary is charged with identifying these locations with the help of the Federal Communications Commission (FCC), which the IIJA further empowers to create broadband data maps. To receive its allocated funds, each state or territory must submit applications subject to the assistant secretary's approval as part of a detailed proposal process. The assistant secretary must inform the states and territories of their allocated funds and give them the opportunity to submit applications no later than 180 days after the IIJA is enacted.

States and territories may competitively award subgrants to meet the IIJA's goals. Subgrantees must then comply with certain standards defined by the assistant secretary in consultation with the FCC and National Institute of Standards and Technology (NIST), including quality of service, cybersecurity, and reliability standards. Grantees and subgrantees must also adhere to extensive oversight and transparency requirements imposed by the IIJA and enforced by the assistant secretary.

Overall, the Broadband Equity, Access, and Deployment Program is intended to provide states and territories with enough flexibility to meet their unique needs while also ensuring the deployed broadband infrastructure is both equitably focused and high quality. [Commerce Secretary Raimondo acknowledges](#) that bringing affordable,

reliable broadband to "every single American" is an arduous task, and reaching Americans in difficult terrains "could take years." Accounting for some administrative startup time, she expects the first deployment projects under the Program to be underway by the end of 2022.

Separate from the Broadband Equity, Access, and Deployment Program, the IJA also directs the assistant secretary to oversee the grantmaking process for a series of smaller grants related to broadband. The State Digital Equity Capacity Grant Program and the Digital Equity Competitive Grant Program, which include about \$2.5 billion in funds, will be focused on more generally increasing digital inclusion and improving digital literacy within certain covered populations, such as seniors and incarcerated individuals. These grants may be awarded for projects intended to increase broadband adoption, for example. The assistant secretary will also be responsible for a "middle mile" grant program that will use its \$1 billion in funds to build out and improve the infrastructure that connects unserved and underserved locations to the nation's internet backbone. Further, the IJA extends the grant program for increasing connectivity specifically on tribal lands that was initiated as a part of [COVID-19 relief emergency funding](#), which the assistant secretary also oversees.

Finally, the IJA has a set of broadband infrastructure provisions that are outside the assistant secretary's purview. It creates tax-exempt private activity bonds to help finance broadband deployment projects in predominately unserved communities. The IJA also expands the Appalachian Regional Commission's (ARC) mandate to promote broadband deployment and adoption in the region, including doubling the amount ARC's funding for such projects to \$20 million a year.

Subsidies for Broadband Internet Access

The IJA dedicates about \$14 billion to directly address the affordability barriers around equitable access to broadband. The Affordable Connectivity Program it establishes is a permanent version of the [Emergency Broadband Benefit Program](#) created as part of [COVID-19 relief emergency funding](#).

The Emergency Broadband Benefit, which is administered by the FCC, currently gives subsidies to qualifying households to help pay for broadband internet access. The subsidies are up to \$75 a month for eligible households on tribal lands and up to \$50 a month for all other eligible households. Eligible households include those with at least one member who (1) has a total income that is 135% or less of the federal poverty line; (2) participates in certain government programs, such as SNAP, Medicaid, and Lifeline; (3) is approved to receive benefits under the reduced price school meals programs; (4) received a 2021 Pell Grant; (5) experienced a substantial loss of income during the COVID-19 pandemic; or 6) otherwise meets the eligibility criteria for a participating internet service provider's low-income or COVID-19 program.

The new Affordable Connectivity Program increases the number of eligible households by relaxing the income ceiling to 200% of the federal poverty line. It also ensures eligible households may apply the subsidy towards any internet service offering of a participating provider, not just a limited subset of service offerings the provider designates for eligible households. However, the Affordable Connectivity Program reduces the amount of the subsidy for all eligible households not on tribal land from \$50 a month under the Emergency Broadband Benefit down to \$30 a month.

The FCC will also administer the new program. The IJA directs the FCC to establish a more formal oversight framework for administering it, including creating rules to protect participating consumers from exploitive behaviors by participating internet service providers. The FCC must also issue the final rules within one year of the IJA's enactment on how it will collect information on the price and subscription rates of each participating internet service provider. The FCC has had success with completing rulemakings within statutory deadlines, such as when it adopted its auction rules under the Omnibus Budget Reconciliation Act of 1993 and

implemented the Telecommunications Act of 1996.

The Affordable Connectivity Program will replace the Emergency Broadband Benefit on December 31, 2021, or when the funds appropriated for the Emergency Broadband Benefit run out, whichever is sooner.

Broadband "Nutrition" Labels

Apart from its funding for grants and subsidies, the IJA attempts to promote greater transparency in broadband pricing and performance by directing the FCC to create regulations that require the display of "broadband consumer labels." These labels, modeled after nutrition labels, provide consumers detailed pricing breakdowns and network performance expectations of a broadband internet service in a standardized format.

As [discussed in a previous update](#), implementing these broadband labels has been a priority of the Biden administration. The FCC under the Obama administration [originally created these labels](#) as part of the net neutrality rules adopted in its [2015 Open Internet Order](#). However, the labels were watered down by the FCC under the Trump administration later as part of its repeal of the Open Internet Order.

The IJA requires the FCC to implement the broadband consumer labels regulation no later than one year after it is enacted.

Conclusion

The IJA includes the largest public investment in digital infrastructure in U.S. history. While the prior administration also focused on bridging the digital divide in rural areas, the IJA changes policy direction with its focus on digital equity by subsidizing service for the disadvantaged and protecting internet access subscribers with new "nutritional" labels. Though there is no guarantee the IJA will achieve all of its objectives, it is a tangible step towards improving the reach and quality of the country's broadband infrastructure and providing more Americans the opportunity to remain connected to the evolving economy.

© 2021 Perkins Coie LLP

Authors



Marc S. Martin

Partner

MMartin@perkinscoie.com [202.654.6351](tel:202.654.6351)



Tyler D. Robbins

Associate

TRobbins@perkinscoie.com [202.654.3313](tel:202.654.3313)

Explore more in

[Technology Transactions & Privacy Law](#) [Communications](#) [Advertising, Marketing & Promotions](#)
[Digital Media & Entertainment, Gaming & Sports](#)

Related insights

Update

[Securities Enforcement Forum DC 2024: Priorities in the Election's Wake](#)

Update

[The New Administration's Impact on Retailers](#)